

Senate Engrossed House Bill

**FILED**

**KEN BENNETT  
SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Forty-ninth Legislature  
Second Regular Session  
2010

CHAPTER 85

## **HOUSE BILL 2002**

AN ACT

AMENDING TITLE 4, CHAPTER 2, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 4-203.05; AMENDING SECTION 4-206.01, ARIZONA REVISED STATUTES; AMENDING TITLE 4, CHAPTER 2, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 4-261.01; RELATING TO SPIRITUOUS LIQUOR LICENSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 4, chapter 2, article 1, Arizona Revised Statutes, is  
3 amended by adding section 4-203.05, to read:

4 4-203.05. Licenses held in nonuse status

5 A LICENSEE WHO HOLDS A LICENSE IN NONUSE STATUS SHALL NOT BE  
6 RESPONSIBLE FOR AND SHALL NOT ACCRUE ANY MUNICIPAL LICENSE FEE OR TAX OR  
7 MUNICIPAL RENEWAL FEE OR TAX ATTRIBUTED TO THE TIME THAT THE LICENSE IS  
8 PROPERLY HELD IN NONUSE STATUS.

9 Sec. 2. Section 4-206.01, Arizona Revised Statutes, is amended to  
10 read:

11 4-206.01. Bar, beer and wine bar or liquor store licenses;  
12 number permitted; fee; sampling privileges

13 A. The director shall determine the total number of spirituous liquor  
14 licenses by type and in each county. The director shall publish a listing of  
15 that information as determined by the director.

16 B. In each county, the director shall issue additional bar, beer and  
17 wine bar or liquor store licenses at the rate of one of each type for each  
18 additional ten thousand person increase over the population in that county as  
19 of July 1, 2010. For purposes of this ~~paragraph~~ SUBSECTION, the population  
20 of a county is deemed to be the population estimated by the department of  
21 economic security as of July 1 of each year.

22 C. A person issued a license authorized by subsection B of this  
23 section shall pay an additional issuance fee equal to the license's fair  
24 market value ~~which~~ THAT shall be paid to the state general fund. The fair  
25 market value shall be defined to mean the mean value of licenses of the same  
26 type sold on the open market in the same county during the prior twelve  
27 months, but if there are not three or more such sales then the fair market  
28 value shall be determined by three appraisals furnished to the department by  
29 independent professional appraisers employed by the director.

30 D. The director shall employ professional appraisal services to  
31 determine the fair market value of bar, beer and wine bar or liquor store  
32 licenses.

33 E. If more than one person applies for an available license, a  
34 priority of applicants shall be determined by a random selection method  
35 prescribed by the director.

36 F. AFTER JANUARY 1, 2011, BAR LICENSES AND BEER AND WINE BAR LICENSES  
37 SHALL BE ISSUED AND USED ONLY IF THE CLEAR PRIMARY PURPOSE AND ACTUAL PRIMARY  
38 USE IS FOR ON-SALE RETAILER PRIVILEGES. THE OFF-SALE PRIVILEGES ASSOCIATED  
39 WITH A BAR LICENSE AND A BEER AND WINE BAR LICENSE SHALL BE LIMITED TO A  
40 MINOR USE, WHICH IS CLEARLY AUXILIARY TO THE PRIMARY ON-SALE PRIVILEGE. A  
41 BAR LICENSE OR A BEER AND WINE BAR LICENSE SHALL NOT BE ISSUED OR USED IF THE  
42 ASSOCIATED OFF-SALE USE, BY TOTAL RETAIL LIQUOR SALES, EXCEEDS TEN PER CENT  
43 OF THE SALES PRICE OF ON-SALE SPIRITUOUS LIQUORS BY THE LICENSEE AT THAT  
44 LOCATION.

1 G. THE DIRECTOR MAY ISSUE A BEER AND WINE STORE LICENSE TO THE HOLDER  
2 OF A BEER AND WINE BAR LICENSE SIMULTANEOUSLY AT THE SAME PREMISES. AN  
3 APPLICANT FOR A BEER AND WINE BAR LICENSE AND A BEER AND WINE STORE LICENSE  
4 MAY CONSOLIDATE THE APPLICATION AND MAY APPLY FOR BOTH LICENSES AT THE SAME  
5 TIME. THE HOLDER OF EACH LICENSE SHALL FULLY COMPLY WITH ALL APPLICABLE  
6 PROVISIONS OF THIS TITLE. A BEER AND WINE BAR LICENSE AND BEER AND WINE  
7 STORE LICENSE ON THE SAME PREMISES SHALL BE OWNED BY AND ISSUED TO THE SAME  
8 LICENSEE.

9 H. THE DIRECTOR MAY ISSUE A BEER AND WINE BAR LICENSE TO THE HOLDER OF  
10 A LIQUOR STORE LICENSE ISSUED SIMULTANEOUSLY AT THE SAME PREMISES. AN  
11 APPLICANT FOR A LIQUOR STORE LICENSE AND A BEER AND WINE BAR LICENSE MAY  
12 CONSOLIDATE THE APPLICATION AND MAY APPLY FOR BOTH LICENSES AT THE SAME TIME.  
13 THE HOLDER OF EACH LICENSE SHALL FULLY COMPLY WITH ALL APPLICABLE PROVISIONS  
14 OF THIS TITLE. A LIQUOR STORE LICENSE AND A BEER AND WINE BAR LICENSE ON THE  
15 SAME PREMISES SHALL BE OWNED BY AND ISSUED TO THE SAME LICENSEE.

16 I. THE DIRECTOR MAY ISSUE A RESTAURANT LICENSE TO THE HOLDER OF A BEER  
17 AND WINE BAR LICENSE ISSUED SIMULTANEOUSLY AT THE SAME PREMISES. AN  
18 APPLICANT FOR A RESTAURANT LICENSE AND A BEER AND WINE BAR LICENSE MAY  
19 CONSOLIDATE THE APPLICATION AND MAY APPLY FOR BOTH LICENSES AT THE SAME TIME.  
20 THE HOLDER OF EACH LICENSE SHALL FULLY COMPLY WITH ALL APPLICABLE PROVISIONS  
21 OF THIS TITLE. A RESTAURANT LICENSE AND A BEER AND WINE BAR LICENSE ON THE  
22 SAME PREMISES SHALL BE OWNED BY AND ISSUED TO THE SAME LICENSEE. THE  
23 LIMITATION SET FORTH IN SUBSECTION F WITH RESPECT TO THE OFF-SALE PRIVILEGES  
24 OF THE BEER AND WINE BAR LICENSES SHALL BE MEASURED AGAINST THE ON-SALES OF  
25 BEER AND WINE SALES OF THE ESTABLISHMENT. FOR PURPOSES OF COMPLIANCE WITH  
26 SECTION 4-205.02, SUBSECTION G, PARAGRAPH 2, IT SHALL BE CONCLUSIVELY  
27 PRESUMED THAT ALL ON PREMISES SALES OF SPIRITUOUS LIQUORS ARE MADE UNDER THE  
28 AUTHORITY OF THE RESTAURANT LICENSE.

29 J. AN APPLICANT FOR A LIQUOR STORE LICENSE OR THE LICENSEE OF A LIQUOR  
30 STORE LICENSE MAY APPLY FOR SAMPLING PRIVILEGES ASSOCIATED WITH THE LICENSE.  
31 A PERSON DESIRING A SAMPLING PRIVILEGE ASSOCIATED WITH A LIQUOR STORE LICENSE  
32 SHALL APPLY TO THE DIRECTOR ON A FORM PRESCRIBED AND FURNISHED BY THE  
33 DIRECTOR. THE APPLICATION FOR SAMPLING PRIVILEGES MAY BE FILED FOR AN  
34 EXISTING LICENSE OR MAY BE SUBMITTED WITH AN INITIAL LICENSE APPLICATION.  
35 THE REQUEST FOR SAMPLING APPROVAL, THE REVIEW OF THE APPLICATION AND THE  
36 ISSUANCE OF APPROVAL SHALL BE CONDUCTED UNDER THE SAME PROCEDURES FOR THE  
37 ISSUANCE OF A SPIRITUOUS LIQUOR LICENSE PRESCRIBED IN SECTION 4-201. AFTER A  
38 SAMPLING PRIVILEGE HAS BEEN ISSUED FOR A LIQUOR STORE LICENSE, THE SAMPLING  
39 PRIVILEGE SHALL BE NOTED ON THE LICENSE ITSELF AND IN THE RECORDS OF THE  
40 DEPARTMENT. THE SAMPLING RIGHTS ASSOCIATED WITH A LICENSE ARE NOT  
41 TRANSFERABLE. NOTWITHSTANDING SECTION 4-244, PARAGRAPH 19, A LIQUOR STORE  
42 LICENSEE THAT HOLDS A LICENSE WITH SAMPLING PRIVILEGES MAY PROVIDE SPIRITUOUS  
43 LIQUOR SAMPLING SUBJECT TO THE FOLLOWING REQUIREMENTS:

44 1. ANY OPEN PRODUCT SHALL BE KEPT LOCKED BY THE LICENSEE WHEN THE  
45 SAMPLING AREA IS NOT STAFFED.

1           2. THE LICENSEE IS OTHERWISE SUBJECT TO ALL OTHER PROVISIONS OF THIS  
2 TITLE. THE LICENSEE IS LIABLE FOR ANY VIOLATION OF THIS TITLE COMMITTED IN  
3 CONNECTION WITH THE SAMPLING.

4           3. THE LICENSED RETAILER SHALL MAKE SALES OF SAMPLED PRODUCTS FROM THE  
5 LICENSED RETAIL PREMISES.

6           4. THE LICENSEE SHALL NOT CHARGE ANY CUSTOMER FOR THE SAMPLING OF ANY  
7 PRODUCTS.

8           5. THE SAMPLING SHALL BE CONDUCTED UNDER THE SUPERVISION OF AN  
9 EMPLOYEE OF A SPONSORING DISTILLER, VINTNER, BREWER, WHOLESALER OR RETAIL  
10 LICENSEE.

11          6. ACCURATE RECORDS OF SAMPLING PRODUCTS DISPENSED SHALL BE RETAINED  
12 BY THE LICENSEE.

13          7. SAMPLING SHALL BE LIMITED TO THREE OUNCES OF BEER OR COOLER-TYPE  
14 PRODUCTS, ONE OUNCE OF WINE AND ONE OUNCE OF DISTILLED SPIRITS PER PERSON,  
15 PER BRAND, PER DAY.

16          8. THE SAMPLING SHALL BE CONDUCTED ONLY ON THE LICENSED PREMISES.

17          K. IF A BEER AND WINE BAR LICENSE AND A BEER AND WINE STORE LICENSE  
18 ARE ISSUED AT THE SAME PREMISES, FOR PURPOSES OF REPORTING LIQUOR PURCHASES  
19 UNDER EACH LICENSE, ALL SPIRITUOUS BEVERAGES PURCHASED FOR SAMPLING ARE  
20 CONCLUSIVELY PRESUMED TO BE PURCHASED UNDER THE BEER AND WINE BAR LICENSE AND  
21 ALL SPIRITUOUS LIQUOR SOLD OFF-SALE ARE CONCLUSIVELY PRESUMED TO BE PURCHASED  
22 UNDER THE BEER AND WINE STORE LICENSE.

23          Sec. 3. Title 4, chapter 2, article 4, Arizona Revised Statutes, is  
24 amended by adding section 4-261.01, to read:

25          4-261.01. Display of license

26          ALL ON-SALE LICENSEES SHALL DISPLAY THE LIQUOR LICENSE IN A CONSPICUOUS  
27 PUBLIC AREA OF THE LICENSED PREMISES THAT IS READILY ACCESSIBLE FOR  
28 INSPECTION BY ANY PEACE OFFICER, DISTRIBUTOR, WHOLESALER OR MEMBER OF THE  
29 PUBLIC.

30          Sec. 4. Existing licenses

31          A. To resolve potential conflicting legal claims between this state  
32 and holders of bar liquor licenses that exceed the sale limitation of section  
33 4-206.01, subsection F, Arizona Revised Statutes, as amended by this act, the  
34 holder of a bar liquor license issued and actively used primarily for  
35 off-sale purposes may surrender the bar liquor license to the department of  
36 liquor licenses and control before January 1, 2011, in exchange for a liquor  
37 store license at no additional cost or charge. The replacement liquor store  
38 license shall be issued without any further application by the licensee,  
39 without any further approval by the department and shall immediately be put  
40 to use by the licensee at the location where the surrendered bar liquor  
41 license was previously used. The licensee shall thereafter have all rights  
42 and privileges associated with the liquor store license, notwithstanding any  
43 other provisions of title 4, Arizona Revised Statutes. The department of  
44 liquor licenses and control shall render void and extinguish any bar liquor  
45 license surrendered pursuant to this subsection.

1           B. For any license issued pursuant to subsection A of this section,  
2 notwithstanding the requirements prescribed in section 4-206.01,  
3 subsection I, Arizona Revised Statutes, as amended by this act, the original  
4 licensee shall have all rights specified in section 4-206.01, subsection I,  
5 Arizona Revised Statutes, as amended by this act, without any further  
6 application by the licensee and without any further approval by the  
7 department of liquor licenses and control. The department of liquor licenses  
8 and control shall identify on the license and in the records of the  
9 department that the new license has the sampling privileges specified in  
10 section 4-206.01, subsection I, Arizona Revised Statutes, as amended by this  
11 act. The sampling rights prescribed in this subsection are nontransferrable  
12 and apply automatically only to the benefit of the licensee that is issued a  
13 replacement liquor store license after the surrender of a bar liquor license  
14 pursuant to subsection A of this section.

15           C. To resolve potential conflicting legal claims between this state  
16 and holders of beer and wine bar liquor licenses that do not meet the  
17 requirements of section 4-206.01, subsection F, Arizona Revised Statutes, as  
18 amended by this act, the holder of a beer and wine bar license that is issued  
19 and actively used primarily for off-sale purposes may apply to the department  
20 of liquor licenses and control for a beer and wine store license, which shall  
21 be issued at no additional cost or charge. A beer and wine store license  
22 that is issued pursuant to this subsection shall immediately be put to use by  
23 the licensee at the location where the beer and wine bar license is being  
24 used. The beer and wine bar and beer and wine store licenses shall be held  
25 by the same licensee. The licensee shall thereafter have all rights and  
26 privileges associated with the beer and wine bar and beer and wine store  
27 license.

APPROVED BY THE GOVERNOR APRIL 19, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 20, 2010.